

Executive Summary

APPEAL

Appellant Michael Cannatti is appealing the issuance of a building permit authorizing new construction at 2104 Stamford Lane.

HISTORY

- On February 9, 2006, a building permit application was filed for new construction at the location of **2104 Stamford Lane**. That application was reviewed on February 23, 2006. The applicant was instructed that he needed to obtain the following before a new construction permit could be issued:
 - a Land Status Determination
 - a revised plot plan showing a 10-foot rear setback
 - a demolition permit to demolish the existing carport
 - a relocation permit for the existing house at that address
 - a historic review, because the house triggered an approval from the Landmark Commission because of the age of the existing structure
- On March 23, 2006, the applicant applied for a relocation permit to move the existing structure at 2104 Stamford Lane. Since the existing house was to be relocated to **1710 Clifford Avenue**, that address needed the following:
 - a permit for a remodel and addition of the structure to be moved onto the lot
 - a floodplain review
 - a Land Status Determination
 - block-face setback averaging (an Interim Regulation which was required from March 9, 2006 to June 22, 2006)
- Factors considered during review of application:
 - extreme back-log of residential permit applications during this time which created a delayed response to the applicant
 - changing single family development regulations
 - need for floodplain review
 - need for a historical review from the Landmark Commission
 - complexity of all the applications that had to be submitted:
 - 2 applications for Land Status Determinations
 - 1 new construction building permit
 - 1 remodel and addition for relocated home from 2104 Stamford Lane to 1710 Clifford Lane
 - 1 demolition permit for the existing carport on the lot
 - 1 relocation permit

SUMMARY OF APPELLANT'S ARGUMENTS AND CITY RESPONSES

1. Appellant's Argument: The approval of the extension was granted after 180 days allowed by Section R 105.3.2 of the International Residential Code (IRC).

City Response: The IRC states:

that an application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the building official is authorized to grant one or more extensions of time for additional periods not exceeding 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

The policy of the City is to approve the extension if an applicant is making a good faith effort. Because the applicant was making a good faith effort to get his applications approved; his project was never deemed abandoned. Since the applicant has consistently extended a good faith effort to move toward compliance with all City Code requirements, and because of the complexities of all the applications for one project, the applicant was granted an extension.

In this case, the applicant was relocating the existing home located at 2104 Stamford to 1710 Clifford. Because the application had to go through a floodplain review, the applicant was not able to proceed until the floodplain review was completed. In addition, the applicant was required to get a Land Status Determination for the current site and a Land Status Determination for the site where the original structure was being relocated. The applicant also had to make corrections to his submittal which extended the review time.

In addition, because of the high number of plans received at the time the application was submitted, many plans were not reviewed until after the 7 days allowed by the Land Development Code. Therefore, the City took longer to respond back to the applicant, thus further delaying the process. The City was making a good faith effort to review plans and work with the builders if the builders were making the good faith effort to get their applications approved.

All during the review period, the applicant remained in constant communication with the reviewers regarding the status of the application. The staff verbally granted approval of the August 2006 extension before the application expired and asked that the applicant write a letter requesting the extension for City records. This is the reason the first request was submitted after the expiration date.

2. Appellant's Argument: The building permit did not comply with all applicable regulations on February 5, 2007, the date the application should have expired, and therefore, must be denied.

City Response: The City granted an extension of the application. The approved permit complied with all applicable City requirements on February 9, 2006, the date the application was submitted.

Plot Plan – Although the City's example of a plot plan (Appellant's Exhibit E) shows structural dimensions, it is not a requirement. The requirements for a plot plan are listed on the application. The original plot plan was rejected for lot dimensions, not structural dimensions.

Tree Dimensions – The applicant must sign an application stating that there are no trees greater than 19" in diameter located on the property immediately adjacent to the proposed construction. If there are trees, then the applicant must schedule a Tree Ordinance review with City Arborist Michael Embesi. The tree review was approved for the demolition February 7, 2006 and a review was approved with conditions the new construction on April 4, 2007.

Impervious Cover Violation – The application showed that the structure was in compliance with the 45% impervious cover requirement. The inspector will request a survey during the construction phase if necessary to ensure compliance. In addition, the driveway will now be ribbon which lowers the original impervious cover.

Plot Plan Does Not Match Building Plan – The inspector will ensure compliance in the field.

The applicant complied with all City Code requirements in effect at the time the application was submitted.

3. Appellant's Argument: The building permit did not comply with the new Residential Design and Compatibility Standards ("McMansion Ordinance").

City Response: The application was submitted prior to the enactment of Residential Design and Compatibility Ordinance so the applicant was not subject to floor-to-area ratio, new building height, building envelope, and sidewall articulation. Since the applicant applied prior to the Residential Design and Compatibility Ordinance, he was allowed to continue because he communicated with the residential reviewers and worked in good faith.

FAR: FAR was not a requirement when the application was submitted. If FAR was calculated under the Residential Design and Compatibility Ordinance, the proposed structure calls for 5,680 sq. ft. of gross floor area on a lot 9,735 sq. ft. lot, resulting in an FAR of .58:1 instead of the .4:1 which is required under the new ordinance.

Building Height: The maximum height allowed for a residential structure when the applicant submitted was 35 ft. The maximum height allowed for a structure under the Residential Design and Compatibility Ordinance is 32 ft. The height of the proposed structure is 34.16 ft. which complies with the rules in effect at the time of the structure.

Building Envelope and Sidewall Articulation: At the time of submittal, the applicant was not required to comply with the building envelope or sidewall articulation.

Again, the applicant filed prior to the enactment of the Residential Design and Compatibility Ordinance and made a good faith effort in completing all requirements for permit issuance. Therefore, per City policy, the applicant was allowed to continue under the ordinance that was in effect when the application was submitted.

4. Appellant's Argument: The City issued a building permit that had already expired.

City Response: The International Building Code R 105.3.2. states that an application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application had been pursued in good faith or a permit has been issued; except that the building official is authorized to grant one or more extensions of time for additional periods not exceeding 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

- The applicant filed on February 9, 2006. The City had an extremely large number of filings at that time which contributed to a lengthy back-log of reviews. Even though the proposed structure is larger than the previous one, the applicant complied with all city codes applicable at the time the application was submitted. Because the applicant did pursue in good faith, the applicant was allowed to continue.
- The applicant did respond to the residential reviewers. There were many verbal exchanges regarding this project and the applicant was diligent in communicating with the residential reviewers.

5. Appellant's Argument: The City approved and issued a building permit to an entity that no longer owns the property and the LDC does not provide for the transfer of an application.

City Response: The building permit application was filed with the authorization of owner Donald Neuhauser, the owner at the time the application was filed. During the review process, the City received notification that Leon Owens was the new owner. The City issued the permit to the new owner. The Code does not prohibit a new owner from continuing with an application. This holds true for all development permits.

6. Appellant's Argument: The City did not require that the demolition permit, relocation permit, and building permit be submitted concurrently as required by the Interim and Final Residential Design and Compatibility Standards.

City Response: The requirement that an application for a building permit be filed concurrently with an application for a demolition or relocation permit was required only during the Interim Ordinance. Since the applicant submitted his application prior to the Interim Ordinance, filing applications concurrently was not required.

Conclusion

The application for building permit BP-06-1284R complied with all City Code requirements in effect at the time the application was submitted. Because the applicant was actively communicating with the residential reviewers and continued to make a good faith effort toward completing all requirements, the applicant was allowed to continue under the ordinance that was in effect at the time the application was submitted. Therefore the application never expired and a letter was not required.

Having shown that the applicant was engaged in a very complex situation, communicated with the building official, acted in good faith, and met all the City requirements in effect at the time of submittal, the building official recommendation is that issuance of the building permit be upheld.

2104 Stamford Lane Timeline

2/9/2006	2/23/2006	3/23/2006	4/24/2006	6/29/2006
New Construction Application for Residential Permit	Plans reviewed/rejected for LSD & Rear setback	Applied for relocate permit to move home from 2104 Stamford to 1710 Clifford – Rejected pending HLC approval	Placed on HLC agenda & approved at the HLC Mtg (required for relocate permit)	Demo permit applied for existing carport
1/11/2007	1/25/2007	1/26/2007	2/5/2007	2/9/2007
Demo permit for existing carport approved & issued	Applied for LSD	LSD approved	Application approved for new construction for 2104 Stamford	Permit approved & issued for relocate to 1710 Clifford
2/12/2007				
Permit issued for new construction				

1710 Clifford Avenue Timeline

4/25/2006	4/25/2006	4/25/2006	11/15/2006	11/20/2006	2/8/2007
Remodel/Addition Permit for relocated House from 2104 Stamford	Remodel/Addition Permit reviewed & rejected for floodplain, LSD, & Setback Avg.	Floodplain review process began	Applied for LSD	LSD approved	Floodplain review approved
2/9/2007					
Permit approved & Issued for Remodel/Addition for Relocated House from 2104 Stamford					